

AMENDED IN ASSEMBLY APRIL 27, 2005

AMENDED IN ASSEMBLY MARCH 31, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 582**

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**Introduced by Assembly Member Matthews**

February 16, 2005

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An act to amend Section 17538.41 of the Business and Professions Code, relating to political advertisements.

### **LEGISLATIVE COUNSEL'S DIGEST**

AB 582, as amended, Matthews. Political advertisements: text messages.

Existing law regulates political advertising by, among other things, requiring paid political advertisements contained in a newspaper to bear a specified disclaimer, prohibiting certain pictures or photos of candidates in campaign materials, and requiring simulated ballots to contain a specified notice.

Existing law, subject to certain exceptions, generally prohibits a person or entity conducting business in this state from transmitting or causing to be transmitted a text message advertisement to a cellular telephone or pager equipped with short message or a similar capability. Existing law provides that a violation of the provisions regulating advertising is a misdemeanor, and also provides for the imposition of civil penalties and injunctive relief.

This bill would, subject to certain exceptions, generally prohibit a person, entity conducting business, candidate, or political committee in this state from transmitting, or causing to be transmitted, a text message advertisement, including a political advertisement, to a mobile telephony service handset, a pager, or a 2-way messaging

device that is equipped with short message or similar capability. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 17538.41 of the Business and  
2 Professions Code is amended to read:

3 17538.41. (a) (1) Except as provided in subdivision (b), (c),  
4 ~~or (d)~~ (d), or (e), no person, entity conducting business,  
5 candidate, or political committee in this state shall transmit, or  
6 cause to be transmitted, a text message advertisement to a mobile  
7 telephony services handset, pager, or two-way messaging device  
8 that is equipped with short message capability or any similar  
9 capability allowing the transmission of text messages. A text  
10 message advertisement is a message, the principal purpose of  
11 which is to promote the sale of goods or services, or to promote a  
12 political purpose or objective, to the recipient, and consisting of  
13 advertising material for the lease, sale, rental, gift offer, or other  
14 disposition of any realty, goods, services, or extension of credit,  
15 or advertising material for political purposes.

16 (2) This section shall apply when a text message  
17 advertisement is transmitted to a number assigned for mobile  
18 telephony service, pager service, or two-way messaging service  
19 to a California resident.

20 (b) This section shall not apply to text messages transmitted at  
21 the direction of a person or entity offering mobile telephony  
22 service, pager service, or two-way messaging service if the  
23 subscriber is offered an option to not receive those text messages.

24 (c) This section shall not apply to text messages transmitted by  
25 a business, *candidate, or political committee* that has an existing  
26 relationship with the subscriber if the subscriber is offered an

1 option not to receive text messages from that business, *candidate*,  
2 *or political committee*.

3 (d) This section shall not apply to text messages transmitted by  
4 an affiliate of a business that has an existing relationship with the  
5 subscriber, but only if the subscriber has provided consent to the  
6 business with which he or she has that relationship to receive text  
7 messages from affiliates of that business. “Affiliate” means any  
8 company that controls, is controlled by, or is under common  
9 control with, another company.

10 (e) *This section shall not apply to electronic mail messages*  
11 *that are forwarded, without the knowledge of the sender, to a*  
12 *mobile telephony services handset, pager, or two-way messaging*  
13 *device.*

14 ~~(e)~~

15 (f) Subdivision (a) shall not impose an obligation on a person  
16 or entity offering mobile telephony service, pager service, or  
17 two-way messaging service to control the transmission of a text  
18 message unless the message is transmitted at the direction of that  
19 person or entity.

20 ~~(f)~~

21 (g) For purposes of this section, “mobile telephony service”  
22 means commercially available interconnected mobile phone  
23 services that provide access to the public switched telephone  
24 network (PSTN) via mobile communication devices employing  
25 radiowave technology to transmit calls, including cellular  
26 radiotelephone, broadband Personal Communications Services  
27 (PCS), and digital Specialized Mobile Radio (SMR).

28 SEC. 2. No reimbursement is required by this act pursuant to  
29 Section 6 of Article XIII B of the California Constitution because  
30 the only costs that may be incurred by a local agency or school  
31 district will be incurred because this act creates a new crime or  
32 infraction, eliminates a crime or infraction, or changes the  
33 penalty for a crime or infraction, within the meaning of Section  
34 17556 of the Government Code, or changes the definition of a  
35 crime within the meaning of Section 6 of Article XIII B of the  
36 California Constitution.